

APPEAL NO. 041618
FILED AUGUST 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 16, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the seventh quarter and that the appellant (carrier) was relieved of liability for the SIBs for the seventh quarter for the time period between January 6 and February 18, 2004. The carrier appeals, contending that the claimant does not meet either the direct result requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(1) (Rule 130.102(b)(1)) or the good faith requirement of Rule 130.102(b)(2). The claimant responds, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criteria in issue are whether the claimant earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from the compensable injury during the qualifying period for the seventh quarter, and whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the seventh quarter. The qualifying period for the seventh quarter was from September 24 through December 23, 2003. The carrier appeals the hearing officer's findings that during the qualifying period for the seventh quarter, the claimant's unemployment was a direct result of the impairment from her compensable injury and that she made a good faith effort to seek employment. The carrier also appeals the hearing officer's decision that the claimant is entitled to SIBs for the seventh quarter.

With regard to the direct result criterion, Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The report of the designated doctor reflects that he assigned the claimant a 17% impairment rating for her compensable bilateral upper extremity injury. Medical reports in evidence explain that the claimant has ongoing work limitations. The claimant testified that her compensable injury would prevent her from working a job comparable to her preinjury job. We conclude that the hearing officer's direct result finding in favor of the claimant is supported by sufficient evidence.

With regard to the good faith criterion, Rule 130.102(d)(2) provides that an employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas

Rehabilitation Commission (TRC) during the qualifying period. The claimant has a TRC Vocational Rehabilitation Services Individualized Plan for Employment (IPE) with an amended date of December 18, 2003. The amended employment goal is to become a registered nurse. During the qualifying period for the seventh quarter, the claimant attended college classes as part of the IPE. The qualifying period for the seventh quarter encompassed the 2003 fall semester. Although the claimant has had difficulty with completing and passing some of her courses, a grade report dated May 13, 2004, reflects that by the end of the fall semester, her cumulative GPA was 2.66. In addition, the claimant's testimony reflects that she is continuing to attend college classes sponsored by the TRC as part of the training requirements under her IPE. In the Findings of Fact, the hearing officer stated that the claimant was enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the TRC. We conclude that the hearing officer's decision in favor of the claimant on the good faith criterion for SIBs entitlement is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 031749, decided August 20, 2003; Texas Workers' Compensation Commission Appeal No. 032172, decided September 5, 2003.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge